

Supreme Court of S.  
FILED  
SEP 2 1977  
MICHAEL RODAK, JR., CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. \_\_\_\_\_

PAUL F. PERATI,

77-341

Petitioner,

vs.

ROBERT O. BATTALION, JOHN M. SANT,  
ANGELO TRENTACOSTA, CALIFORNIA  
DEPARTMENT OF TRANSPORTATION,  
CALIFORNIA STATE PERSONNEL BOARD,  
JOHN DOES, ONE and TWO,

Respondents.

PETITION FOR WRIT OF CERTIORARI  
TO  
THE CALIFORNIA STATE COURT OF APPEAL  
FIRST APPELLATE DISTRICT, DIVISION THREE

PAUL F. PERATI

6110 Aspinwall Road  
Oakland, California 94611  
Telephone: (415) 339-1901

Petitioner In Propria Persona

case

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1977

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PAUL F. PERATI,

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ANGELO TRENTACOSTA, CALIFORNIA  
DEPARTMENT OF TRANSPORTATION,  
CALIFORNIA STATE PERSONNEL BOARD,  
JOHN DOES, ONE and TWO,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND  
ASSOCIATE JUSTICES OF THE SUPREME COURT  
OF THE UNITED STATES:

The Petitioner respectfully requests a hearing  
in the above titled cause, and sets forth his  
reasons as follows:

Superior Court of the State of California,  
County of Alameda, No. 460-973, Order of  
Dismissal - Demurrer Sustained Without Leave



To Amend - C.C.P., §§581(3), 581d (Judgment) is attached herein and appears in Appendix "A".

#### OPINION BELOW

---

The Opinion of the California State Court of Appeal is unreported (1st Civil No. 39,034), is attached herein to this Petition and appears in Appendix "B".

#### JURISDICTION

---

The California State Court of Appeal Decision and Opinion was rendered and filed May 11, 1977, is attached herein and appears in Appendix "B". The Decision Denying a Rehearing was filed June 9, 1977, is attached herein and appears in Appendix "C".

The California State Supreme Court Order Denying a Hearing was filed July 6, 1977, is attached herein and appears in Appendix "D".

Jurisdiction is invoked under 28 U.S.C., §1257(3), and 29 U.S.C., §219, wherein Congress requests Fair Labor Standards cases be tried on a case by case basis. Petitioner has no remedy in any other state court as he has requested relief in the Superior Court, County of Alameda, State of California; Court of Appeal, First Appellate District of the State of California, and the California Supreme Court to no avail.

// //

#### QUESTIONS PRESENTED

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THE FOLLOWING SUBSTANTIAL QUESTIONS ARE IN ISSUE:

1. May the People of the State of California Consent to and Adopt the Overtime Provisions of the Fair Labor Standards Act for its State Employees, 29 U.S.C., §§201-219?
2. May a State Under the Guise of State Sovereignty, Pay its Public Employees a Wage Below the Minimum Wage and Maximum Hours (Overtime) Found by Congress Necessary to maintain the Health, Efficiency and General Well Being of American Workers, and Does the Fair Labor Standards Act, 29 U.S.C., §§201-219 Apply to State Employees?
3. May Congress Confer Exclusive Jurisdiction for Liability Under the Fair Labor Standards Act (29 U.S.C., §§201-219) in State or Federal Courts of Competent Jurisdiction, and Require That These Cases be Tried on a Case by Case Basis?
4. May a State Constitution Confer ORIGINAL Jurisdiction in all Matters That Could Come Before it for Decision in the Judicial Branch, and Prohibit the Exercise of Judicial Power by Those Not Members of the Judicial Branch?

5. Can a Constitutional Provision in a State Constitution (Which is a Limitation on Power) Which Allows an Executive Branch of Government to Review Disciplinary Actions (and no other Review Power) be Considered Carte Blanche Authority to Review and Decide Matters That are Not Disciplinary in Nature (Matters Constitutionally placed in the Judicial Branch of Government for ORIGINAL Jurisdiction) as a Pre-requisite to Original Court Jurisdiction?

6. Has Petitioner Pleaded a Violation of a Substantial Federal Property Right, Protected by the Equal Protection Provisions of Article I, §7 of the California Constitution and Basic Due Process and Equal Protection Covered by the Fourteenth Amendment, When He Pleaded:

For Two of the Days in Question  
Petitioner's Fellow Workers Were  
Paid Cash At The Overtime Time,  
Time-and-One-Half-Rate, Whereas  
Petitioner Was Ordered To Take  
Compensating Time Off On A  
Straight Hour For Hour Basis?

THE CONSTITUTIONAL, STATUTORY AND  
CASES INVOLVED IN THIS CAUSE ARE AS  
FOLLOWS:

United State Constitution, Article I, §3

To regulate Commerce with foreign Nations  
and among the several States,\*\*\*\*\*;(18)

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

United States Constitution, Article VI, (2).

This Constitution and the Laws of the United States which shall be made in Pursuance thereof; \*\*\*\*\*; under the Authority of the United States, shall be the Supreme Law of the Land the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Fifth Amendment:

\*\*\*\*\* , nor be deprived of life, liberty or property without due process of law.

United States Constitution, Fourteenth Amendment (which incorporates The Bill of Rights), §1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5, the Congress shall have power to enforce, by appropriate legislation the provisions of this article.

California Constitution, Article III, §3:

"The powers of state government are legislative, executive and judicial. Persons charged with the exercise either of the others except as permitted by this Constitution."

California Constitution, Article VI, §1:

"The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. All except justice courts are courts of record."

California Constitution, Article VI, §10:

"The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. These courts also have jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari and prohibition. Superior courts have original jurisdiction in all causes except those given by statute to other trial courts. \*\*\*\*\* not relevant."

Term "CAUSE" as used in the State Constitution -- means every matter that could come before the court decision. Quezada vs. Superior Court, 171 Cal.App.2d 528, 530 (3).

The usual remedy for failure of an employer to pay wages owing an employee is an action for breach of contract; if that remedy is adequate, mandate will not lie -- cases cited. But often the payment of wages of a public employee requires certain preliminary steps by public officials; in such instances, the action in contract is inadequate and mandate is the appropriate remedy -- cases cited. Glendale City Employee's Assoc. vs. City of Glendale, 15 Cal.3rd, 328, 343 (6a).

"Notwithstanding any other provision of this chapter, the Personnel Board is authorized to provide for overtime payments as prescribed by the Federal Fair Labor Standards Act to state employees."

California Government Code, §18021.6.

(2) Legislation by reference or Adoption -- The rule as to statutory adoption by specific reference to the provisions of another statute applies to the adoption of statutes of another jurisdiction and treaties.

(3) Where a statute adopts by reference a system or body of laws or the general law relating to the subject in hand, the statute takes the law or laws referred to, not only in their contemporary form, but



also as they may be changed from time to time, and as they may be subjected to elimination by repeal. Palermo vs. Stockton Theatres, Inc., 32 Cal.2nd 53, 58, 59.

Congress found to maintain the minimum standard of living necessary for health, efficiency and general well being of workers, it is the policy of this Chapter etc. 29 U.S.C., §202.

Employer includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency. 29 U.S.C., §203(d).

\*\*\*\*\*, for work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one half times the regular rate at which he is employed. 29 U.S.C., §207(a)(1).

Any employer who violates the provisions of §§206 or 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages or their overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Actions to recover such liability may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction. \*\*\*\*\*. 29 U.S.C., §216(b).

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter and the application to other persons or circumstances shall not be affected thereby. 29 U.S.C. §219.

California Constitution, XXIV in its relevant part provides (3):

"The board (Personnel) shall enforce the civil service statutes and by majority vote of all its members, shall prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions. (b) The executive officer shall administer the civil service statutes under rule of the board.

#### CONSTITUTIONAL CONSTRUCTION—

"If the constitution has vested such power, it is not within the legislative power, either by silence or by direct enactment to modify, curtail, or abridge this constitutional grant." Western Assoc., etc., R.R. vs. Railroad Comm., 173 Cal. 802, 804. Cited with approval in People vs. Western Air Lines, Inc., 42 Cal.2nd 621, 637 (24).

The United States Supreme Court has long recognized a constitutional right of access to the courts for all persons, in-

cluding prisoners (1). Meaningful access to the courts is protected by the Fourteenth Amendment and is an equal protection right. Payne vs. Superior Court, 17 Cal.3rd 908.

#### STATEMENT OF THE CASE

---

Petitioner, employed on the California State Bay Bridge, petitioned for a writ of mandate to require respondents' to grant him over-time pay for 29 days in which he worked in excess of 40 hours in a work week, as provided for by the Fair Labor Standards Act, page 102 of the Clerk's Transcript on Appeal.

Petitioner alleged for two of these days, his fellow workers were paid cash overtime at the time and one half rate, while petitioner was ordered to take compensating time off on a straight hour for hour basis, page 101 of the Clerk's Transcript on Appeal, (thus a due process and equal protection error of state and federal constitutional magnitude).

Petitioner pleaded jurisdiction was vested in the Superior Court by the Fair Labor Standards Act, page 100 of the Clerk's Transcript on Appeal.

In petitioner's return to respondents demurrer -- petitioner pointed to the supremacy clause of the constitution and that an administrative remedy did not apply as jurisdiction was in state or federal courts, page 125 of the Clerk's Transcript on Appeal.

That it is against public policy to obstruct the right of access to the courts, page 126 of the Clerk's Transcript on Appeal.

That by state statute respondent Personnel Board is authorized to provide for overtime payments as prescribed by the Fair Labor Standard Act to state employees, page 126 of the Clerk's Transcript on Appeal.

The Trial Court did not rule on the validity of the Fair Labor Standards Act, as Maryland vs. Wirtz, 392 U.S. 183, was not overruled by National League of Cities vs. Usery, 426 U.S. 833 until about four months after petitioner filed his notice of appeal. (As California consented to and adopted the over-time provisions of the F.L.S.A., 29 U.S.C. §§201-219, no interference with state sovereignty is in issue.)

For one of the days in issue (where petitioner was given time off on a straight hour for hour basis, and his fellow workers were paid cash at the time and one half rate), Petitioner did file an appeal with the Personnel Board, but the appeal was not accepted, and petitioner was informed no further action would be taken until petitioner furnished information the Board already had access to and which was not relevant at the notice of appeal step. Thus, no title or number, merely a letter not accepting jurisdiction.

The Trial Court's Judgment of Dismissal appears in Appendix "A". While no reasons were given for sustaining the demurrer, it is fair to assume it was sustained on the grounds

some administrative remedy was required prior to court jurisdiction. This, if true, overlooks the fact that original jurisdiction was vested in state or federal courts by 29 U.S.C. §§201-219, which overtime provisions were adopted by California, and that when the payment of wage of a public employee requires certain preliminary steps -- mandate is the proper remedy.

#### IN THE DISTRICT COURT OF APPEAL

---

Petitioner's Opening Brief called the Appeal Court's attention to 29 U.S.C. §219 -- that F.L.S.A. actions were to be tried on a case by case basis, (Opening Brief, page 5); that the F.L.S.A. applied to state employee's Opening Brief, page 6; that California consented to and adopted the F.L.S.A. overtime provisions (Opening Brief, page 6); that under Glendale City Employee's Association vs. City of Glendale, 15 Cal.3rd 328, 343 (6a), Mandate is the proper remedy for a public employee to obtain payment of wages, (Opening Brief, page 8); that by California Constitutional provision, Respondent Personal Board is limited in its review authority -- may only review disciplinary actions, (Opening Brief, page 9); that petitioner pleaded he was given time off on a straight hour for hour basis while his fellow workers were paid cash at the time and one half rate, (Opening Brief, page 11); that California consented to and adopted the overtime payments prescribed by the F.L.S.A., (Opening Brief, page 12).

// //

In Petitioner's District Court of Appeal Reply Brief, petitioner pleaded that California superior courts by state constitutional mandate have original jurisdiction in all causes except those given to other trial courts -- and persons charged with one power may not exercise either of the others (separation of powers) except as provided by this Constitution, (Reply Brief, page 3); that the people consented to the overtime provisions of the F.L.S.A. (Reply Brief, page 6); that California has the authority to adopt a statute of another jurisdiction (Reply Brief, page 8); that original jurisdiction for liability under the F.L.S.A. is vested in the state and federal courts (Reply Brief, page 9); that superior courts have original jurisdiction in all causes except those given to other trial courts, (Reply Brief, page 10).

The California Court of Appeal Judgment and Opinion Appendix "B", held exhaustion of administrative remedies is a pre-requisite to court jurisdiction, overlooking the fact that jurisdiction for F.L.S.A. cases is vested in state and federal courts, and that superior courts have original jurisdiction in all causes except those given by statute to other trial courts, and that as of November 3, 1970, California Constitution, Article XXIV, was amended to limit and restrict Respondents review power to disciplinary actions. A constitutional grant or restriction cannot be enlarged by statute. Also overlooked was the fact petitioner at first did give proper appeal notice, but was under no duty to try the case by letter, when respondents had all the information in their records, and were restricted in their review authority to disciplinary actions.



The Appeal Court Opinion held that under National League of Cities vs. Usery, 426 U.S. 833, the F.L.S.A. is not constitutionally applicable to the states, overlooking the fact that California adopted the overtime provisions thus, no impermissible interference with integral government functions as disapproved in the National League of Cities.

#### ARGUMENT

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So as not to exceed petitioner's budget unreasonably, petitioner must restrict his argument to a brief summary.

The F.L.S.A. is severable, maximum hours and overtime compensation. The overtime provisions were adopted and consented to by the People of the State of California, California Government Code, Section 18021.6.

All issues are questions of law, vested in the judicial branch by the F.L.S.A. and the California Constitution, Article III, §3, and Article VI, §§1 and 10.

Respondent, State Personnel Board is limited in its review authority as of November 3, 1970, to the review of disciplinary actions, California Constitution, Article XXIV, §3, and this limitation cannot be enlarged by statutes enacted before or even after the restriction was placed in the California Constitution.

It is basic that congressional power under the commerce clause is plenary, and when it collides with state sovereignty, a question of

proper balance comes into being. Congress has found that if a state pays its public employees a wage below its established minimum wage and maximum hours (overtime) provisions, the wage payment is not enough to maintain the health, efficiency and general well being of American workers. Thus, as this becomes a protected right under the due process provision of the Fifth Amendment, and is certainly one of the privileges of citizens of the United States within the privileges provision of the Fourteenth Amendment to have a wage payment sufficient to maintain health, efficiency, and general well being mandated by Congress, and as the Bill of Rights is incorporated into the Fourteenth Amendment, the Fair Labor Standards Act should be considered within the due process and equal protection provisions of the Fourteenth Amendment. This would not be far afield from Fitzpatrick vs. Bitzer, decided a week after National League of Cities.

Nor did the Court of Appeal Opinion consider that petitioner's fellow workers were paid cash at the time and one half rate for two of the days in issue, and petitioner was assigned compensating time off on a straight hour for hour basis. Thus, petitioner was singled out for discriminatory and arbitrary treatment in violation of the California and United States Constitutions due process and equal protection provisions.

// //



## CONCLUSION

Petitioner requests that this Petition for a Writ of Certiorari be granted, that the clerk request the clerk of the Court of Appeal of the State of California, First Appellate District, to certify the record in this cause and transmit it to this Court, as provided by Rule 25, Rules of the Supreme Court.

Dated: September 1, 1977

Respectfully submitted,

PAUL F. PERATI  
Petitioner  
In Propria Persona

## APPENDIX A

SUPERIOR COURT JUDGMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

PAUL F. PERATI,	)	
	)	
Petitioner,	)	
	)	
v.	)	NO. 460-973
	)	
ROBERT O. BATTALION,	)	ORDER OF DIS-
JOHN M. SANT,	)	MISSAL -
ANGELO TRENTACOSTA,	)	DEMURRER
CALIFORNIA DEPART-	)	SUSTAINED WITH-
MENT OF TRANSPORTA-	)	OUT LEAVE TO
TION, CALIFORNIA	)	AMEND - C.C.P.
STATE PERSONNEL	)	§§581(3), 581d
BOARD, JOHN DOES,	)	<u>JUDGMENT</u>
ONE AND TWO,	)	
	)	
Respondents.	)	
	)	

The above-entitled matter came on regularly for hearing on December 29, 1975, pursuant to petitioner's Motion For A Peremptory Writ of Mandate and respondents' Opposition To Motion For Peremptory Writ of Mandate and Demurrer To Third Amended and Supplemental Petition For Peremptory Writ of Mandate. Paul F. Perati, petitioner, appeared In Propria Persona and Evelle J. Younger, Attorney General, by Harold W. Teasdale, Deputy Attorney General, appeared as counsel for respondents. The Honorable Robert Brailsford, presiding, having heard and considered respondents' demurrer and the oral and written arguments of the respective parties; and after

considering the issue of law thereby presented  
having sustained said demurrer without leave to  
amend,

NOW, THEREFORE, IT IS HEREBY ORDERED,  
ADJUDGED AND DECREED that plaintiff take  
nothing by his Third Amended and Supplemental  
Petition For Peremptory Writ of Mandate, that  
the same be and hereby is dismissed and the  
defendants recover their costs herein in the  
amount of \$10.50.

DATED:

JUDGE OF THE SUPERIOR COURT

APPENDIX  
B

COURT OF APPEAL JUDGMENT

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA FIRST APPELLATE DISTRICT,  
DIVISION THREE

PAUL F. PERATI, )	FILED
)	MAY 11 1977
Plaintiff )	Court of Appeal-
and Appellant, )	First App. Dist.
)	CLIFFORD C. PORTER, Clerk
vs. )	By _____
)	Deputy
ROBERT O. )	1 Civil No. 39034
BATTAION, JOHN )	(Sup. Ct. #460973-7)
M. SANT, )	
)	
Defendants.)	
and Respondents.)	
_____)	

Plaintiff, a toll collector on the Bay Bridge, sought writ of mandate to compel the state personnel board, the department of transportation, and three toll bridge lieutenants to grant him overtime pay. Demurrers to his petition and to the first and second amended petitions were sustained with leave to amend. Demurrer to the third amended petition was sustained without leave to amend, and the proceeding was dismissed. Plaintiff appeals.

All the petitions and the briefs here were filed by appellant in propria persona. He alleges initially that he filed a grievance with the department of transportation relating to



denial of overtime pay for May 27, 1974, a holiday, and the denial of sick leave for the two succeeding days. Subsequent amendments add claims for Memorial Day, 1975, and for a number of weeks of alleged overtime. It is alleged that he appealed to the state personnel board. The petition incorporates a letter of that board seeking from appellant a concise statement "explaining the specific relief" he seeks, an explanation of the relationship between the claim for sick leave and the manner of compensation for holiday work, and copies of pertinent correspondence with the department of transportation. The letter advised that no further action would be taken by the board until the requested information was received. Appellant did not supply the information, but seeks to avoid this failure by alleging that the correspondence was available from the department.

But there is no attempt to explain the failure to answer the other requests. If appellant feels that his several petitions to the superior court somehow obviate the necessity of submitting a concise statement of the relief he seeks and an explanation of the relationship of his several claims, he is mistaken. We have reviewed the petitions in detail. Each is verbosely confusing as to the relief sought. There is no explanation of the relationship of the sick leave grievance and the complaint about holiday compensation set forth in the first amended petition. This confusion is compounded by the addition in amendments of a like claim for a later year, and a claim for overtime accumulated over a long period. We conclude that the board's request for explanation or amplification of the issues appealed

was fully justified. The trial court obviously concluded that petitioner's refusal of the board request constituted a failure to exhaust his administrative remedy.

Exhaustion of administrative remedies is a pre-requisite to court jurisdiction over the subject matter (see *AbelTeira v. District Court of Appeal*, 17 Cal.2d 280, 291-292; 2 Witkin, Calif. Proc. (2d ed.) p. 1045). This issue may be raised by demurrer (Code Civ. Proc., §430.10) when, as here, it is apparent on the face of the complaint.

Contrary to appellant's argument, "[w]here an administrative remedy is provided by statute, relief must be sought from the administrative body and the remedy exhausted before the courts will act" (*Hollon v. Pierce*, 257 Cal. App.2d 468, 475). The civil service act (Gov. Code, §§18500-19786) gives the board jurisdiction over all such issues as are raised by this petition. It specifically provides that the board may hold hearings, require attendance of witnesses, etc. Appellant argues that he was denied hearing and right to present his case. But the board, by statute and by its rules adopted under statutory authority, does reasonably ask for an understandable statement of a claim before setting their machinery in motion. Appellant refused such a statement.

Appellant argues that under the federal fair labor standards act (29 U.S.C. 216(b)) he is afforded direct access to the courts for denial of any benefit of that act. But the act is not constitutionally applicable to the states and their political subdivisions (National

League of Cities v. Usery, 426 U.S. 833). Nor does the federal act purport to abrogate the requirement of exhaustion of administrative remedies. Equally lacking to merit is appellant's argument that the doctrine of separation of powers bars the performance of quasi-judicial functions by a board which is part of the executive branch (see Bixby v. Pierno, 4 Cal.3d 130, 141-144).

Nor is there merit in appellant's contention that by merely filing an appeal with the board he exhausted his administrative remedy. "Before seeking judicial review, a party must show that he has made a full presentation to the administrative agency upon all issues in the case and at all prescribed stages of the administrative proceedings" (Bleek v. State Board of Optometry, 18 Cal.App.3d 415, 437). Here, appellant at the outset refused the board's request for a moderately clear statement of his complaint. His own intransigence, continued over a long period of time despite repeated adverse rulings of the trial court, amounts to abandonment of his administrative remedy.

[Judgment affirmed.]

/s/ \_\_\_\_\_  
Draper, P.J.

We concur:

/s/ \_\_\_\_\_  
Scott, J.

/s/ \_\_\_\_\_  
Good, J.\*

I, CLIFFORD C. PORTER, CLERK OF THE COURT OF APPEAL, STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DO HEREBY CERTIFY THAT THE PRECEDING AND ANNEXED IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE.

WITNESS MY HAND AND THE SEAL OF COURT.

THIS 19th DAY OF August 1977  
CLIFFORD C. PORTER CLERK

/s/ By \_\_\_\_\_ DEPUTY  
R. Weissmann

---

\* Retired Judge of the Superior Court, assigned by the Chairman of the Judicial Council.

APPENDIX  
C

DENIAL OF PETITION FOR REHEARING IN  
THE COURT OF APPEAL

ORIGINAL

COURT OF APPEAL OF THE STATE OF  
CALIFORNIA IN AND FOR THE  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Paul R. Perati,	)	
	)	
Plaintiff	)	FILED
and Appellant,	)	JUN 9 1977
	)	Court of Appeal-
	)	First App. Dist.
vs.	)	CLIFFORD C. PORTER,
	)	Clerk
Robert O. Battalon,	)	By _____
et al.,	)	Deputy
	)	
Defendants	)	
and Respondents.	)	NO. 39034
	)	

BY THE COURT:

The petition for a rehearing filed in the  
above entitled cause is hereby denied.

I, CLIFFORD C. PORTER, CLERK OF  
THE COURT OF APPEAL, STATE OF  
CALIFORNIA, FIRST APPELLATE DIS-  
TRICT, DO HEREBY CERTIFY THAT  
THE PRECEDING AND ANNEXED IS A

TRUE AND CORRECT COPY OF THE  
ORIGINAL ON FILE IN MY OFFICE.

WITNESS MY HAND AND THE SEAL  
OF COURT.

THIS 19th DAY OF August 1977  
CLIFFORD C. PORTER CLERK

/s/ By \_\_\_\_\_ DEPUTY  
R. Weissmann

/s/ \_\_\_\_\_  
Draper, P. J.

Dated JUN 10 1977

APPENDIX  
D

DENIAL OF PETITION FOR HEARING IN  
THE CALIFORNIA SUPREME COURT



ORDER DATE  
July 8, 1977

ORDER DENYING HEARING  
AFTER JUDGMENT BY THE COURT OF APPEAL

1st District, Division 3, Civil No. 39034

IN THE SUPREME COURT OF THE STATE OF  
CALIFORNIA IN BANK

PERATI

v.

BATTAION et al.

SUPREME COURT

FILED

JUL 6 1977

G.E. BISHEL, Clerk

/s/

R.C. Matteoli, Deputy

Bird, C.J., did not participate.

Appellant's petition for hearing DENIED.

I, G.E. BISHEL, Clerk of the Supreme  
Court of the State of California, do  
hereby certify that the preceding is a  
true copy of an order of this Court, as  
shown by the records of my office.

Witness my hand and the seal of  
the Court this \_\_\_\_\_ day of  
AUG 19 1977 A.D. 19 \_\_\_\_\_

Clerk

By /s/ \_\_\_\_\_  
R.C. Matteoli, Deputy Clerk

/s/ \_\_\_\_\_  
Tobriner  
Acting Chief Justice